

Bill No.: \_\_\_\_\_

Requested: \_\_\_\_\_

Committee: \_\_\_\_\_

By: **Senator Zirkin**

*Department of Human  
Resources and the Department  
of Juvenile Services to issue  
a statement*

Drafted by: Smulski

Typed by: David

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Proofread by ☒Checked by ☒

## A BILL ENTITLED

1 AN ACT concerning

2 **Residential Child Care Programs - Certificate of Need**

3 FOR the purpose of requiring a certificate of need for developing, operating,  
 4 establishing, relocating, or expanding a residential child care program;  
 5 providing certain exceptions; requiring the Governor's Office for Children to  
 6 ~~award a certificate of need to a program based on certain criteria; requiring~~  
 7 ~~members of the Children's Cabinet to adopt certain regulations; requiring the~~  
 8 ~~Office to provide notification of certain applications in a certain manner;~~  
 9 ~~requiring the Office to make certain decisions on an application based on a~~  
 10 ~~certain plan; providing for the approval of certain applications for certain~~  
 11 ~~certificates of need; requiring the Office to act on an application for a certificate~~  
 12 ~~of need within a certain amount of time; authorizing the Office to hold an~~  
 13 ~~evidentiary hearing under certain circumstances; authorizing certain interested~~  
 14 ~~persons to submit written comments; requiring the office to issue a certain~~  
 15 ~~proposed decision; authorizing certain persons to submit exceptions to the~~  
 16 ~~proposed decision; authorizing the Office to grant multiple certificates of need~~  
 17 ~~under certain circumstances; requiring the Office to make a decision on certain~~  
 18 ~~applications within certain periods of time; authorizing an applicant to file a~~  
 19 ~~certain petition with a certain court under certain circumstances; providing that~~  
 20 ~~the Office's decision on an application is the final administrative decision;~~

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



21 defining certain terms; and generally relating to certificates of need for  
22 residential child care programs.

23 ~~BY repealing and reenacting, without amendments,~~  
24 ~~Article - Human Services -~~  
25 ~~Section 8-703 -~~  
26 ~~Annotated Code of Maryland -~~  
27 ~~(2007 Volume) -~~

28 BY adding to  
29 Article - Human Services  
30 Section 8-703.1  
31 Annotated Code of Maryland  
32 (2007 Volume)

33 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
34 MARYLAND, That the Laws of Maryland read as follows:

35 **Article - Human Services**

36 ~~8-703.~~

37 ~~(a) There is a State Resource Plan for Residential Child Care Programs.~~

38 ~~(b) The purpose of the Plan is to enhance access to services provided by~~  
39 ~~residential child care programs.~~

40 ~~(c) On or before July 1 of each year, the Office shall develop the Plan in~~  
41 ~~consultation with the agencies, providers, counties, child advocates, consumers, and~~  
42 ~~any other State unit, entity, or person that the Office identifies as having relevant~~  
43 ~~information or that is interested in the development of the Plan.~~

44 ~~(d) The Plan shall:~~

45 ~~(1) provide a framework for the Office and the agencies to procure~~  
46 ~~residential child care program services that meet the needs identified in the Plan;~~

(2) provide the following information on residential child care programs:

- (i) the county where each program is operated;
- (ii) the provider for each program;
- (iii) the actual capacity and utilization rate for each program;
- (iv) the ages of the children in each program;
- (v) the county where each child in a program lived at the time the child entered out-of-home placement;
- (vi) the services children require and a description of how those services are being provided;
- (vii) the agency that placed children in each program; and
- (viii) any other information the Office or the agencies, providers, or counties consider relevant;

(3) identify the types of services needed in residential child care programs and the estimated number of children requiring those services in each county;

(4) identify the counties where the services identified in item (3) of this subsection are insufficiently supplied;

(5) establish an incentive fund for residential child care program development in the counties identified in item (4) of this subsection; and

(6) identify the reasons children are placed in residential child care programs outside of the counties where the children lived at the time they entered out-of-home placement in accordance with § 5-525 of the Family Law Article.

(e) On or before January 1 of each year, the Office shall report to the Governor and, in accordance with § 2-1246 of the State Government Article, the

72 ~~Senate Finance Committee and the House Health and Government Operations~~  
 73 ~~Committee on the Plan's findings and recommendations.~~

74 8-703.1. (2) "LICENSING AGENCY" MEANS:  
 (1) THE DEPARTMENT OF HUMAN RESOURCES; AND  
 (A) THE DEPARTMENT OF JUVENILE SERVICES.

75 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE  
 76 MEANINGS INDICATED.

77 (3) (2) "CERTIFICATE OF NEED" MEANS A CERTIFICATION OF  
 78 PUBLIC NEED FOR THE LOCATION AND ESTABLISHMENT OF A RESIDENTIAL  
 79 CHILD CARE PROGRAM ISSUED BY THE OFFICE UNDER THIS SECTION.

80 (3) "INTERESTED PERSON" MEANS:

81 (I) ANY MEMBER OF THE CHILDREN'S CABINET;

82 (II) ANY APPLICANT WHO HAS SUBMITTED A COMPETING  
 83 APPLICATION;

84 (III) ANY OTHER PERSON THAT CAN DEMONSTRATE THAT  
 85 THE PERSON WOULD BE ADVERSELY AFFECTED BY THE DECISION OF THE  
 86 OFFICE ON THE APPLICATION;

87 (IV) THE LOCAL GOVERNING BODY OF A COUNTY IN WHICH  
 88 THE PROPOSED RESIDENTIAL CHILD CARE PROGRAM WILL BE LOCATED; AND--

89 (V) ANY OTHER PERSON THE MEMBERS OF THE CHILDREN'S  
 90 CABINET DESIGNATE BY REGULATION.

91 (B) (1) THE MEMBERS OF THE CHILDREN'S CABINET SHALL ADOPT  
 92 REGULATIONS GOVERNING THE APPLYING FOR AND ISSUING OF CERTIFICATES  
 93 OF NEED.

94 (2) THE MEMBERS OF THE CHILDREN'S CABINET MAY ADOPT,  
 95 AFTER OCTOBER 1, 2009, NEW THRESHOLDS OR METHODS FOR DETERMINING  
 96 THE CIRCUMSTANCES UNDER WHICH A CERTIFICATE OF NEED APPLICATION  
 97 MUST BE FILED.

- 98 (C) ~~THE OFFICE SHALL ISSUE A CERTIFICATE OF NEED BASED ON:~~  
 99 ~~AN APPLICATION MAY~~ <sup>NOT</sup> ~~BE SUBMITTED TO THE OFFICE AND A~~  
 100 ~~CHILD CARE PROGRAM FROM THE LICENSING AGENCY FOR THE RESIDENTIAL~~  
 101 ~~CHILD CARE PROGRAM; AND LICENSE~~ <sup>MAY NOT</sup> ~~GRANTED BY A LICENSING AGENCY FOR~~  
 102 ~~A RESIDENTIAL CHILD CARE PROGRAM UNTIL A LICENSING AGENCY~~  
 103 ~~ISSUES A STATEMENT OF NEED FOR A RESIDENTIAL CHILD CARE PROGRAM IN A COMMUNITY.~~  
 104 (D) ~~(1) (I) A PROVIDER SHALL HAVE A CERTIFICATE OF NEED~~  
 105 ~~ISSUED BY THE OFFICE BEFORE THE PERSON DEVELOPS, OPERATES, OR~~  
 106 ~~PARTICIPATES IN ANY RESIDENTIAL CHILD CARE PROGRAM.~~  
 107 (H) ~~THE REQUIREMENTS FOR OBTAINING A CERTIFICATE~~  
 108 ~~OF NEED UNDER THIS SECTION DO NOT APPLY TO A RESIDENTIAL CHILD CARE~~  
 109 ~~PROGRAM LICENSED BY AN AGENCY BEFORE OCTOBER 1, 2008.~~  
 110 <sup>IN ADDITION TO THE STATEMENT OF NEED REQUIRED</sup>  
 111 <sup>(D)</sup> ~~(2) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS~~  
 112 <sup>UNDER SUBSECTION (C) OF THIS SECTION,</sup> ~~PARAGRAPH, A CERTIFICATE OF NEED IS REQUIRED BEFORE:~~  
 113 <sup>A STATEMENT</sup>  
 114 (1) ~~1. AN EXISTING OR PREVIOUSLY LICENSED~~  
 115 ~~RESIDENTIAL CHILD CARE PROGRAM IS RELOCATED TO ANOTHER SITE;~~  
 116 (2) ~~2. THE PHYSICAL SITE OF A RESIDENTIAL CHILD~~  
 117 ~~CARE PROGRAM IS EXPANDED OR RENOVATED; OR~~  
 118 (3) ~~3. THE NUMBER OF PLACEMENTS IN A RESIDENTIAL~~  
 119 ~~CHILD CARE PROGRAM IS INCREASED.~~  
 120 (H) ~~SUBPARAGRAPH (I) 1 OF THIS PARAGRAPH DOES NOT~~  
 121 ~~APPLY IF:~~  
 122 ~~1. THE MEMBERS OF THE CHILDREN'S CABINET~~  
 123 ~~ADOPT LIMITS FOR RELOCATIONS AND THE PROPOSED RELOCATION DOES NOT~~  
 124 ~~EXCEED THOSE LIMITS; OR~~  
 125 ~~2. THE RELOCATION IS THE RESULT OF A PARTIAL~~  
 126 ~~OR COMPLETE REPLACEMENT OF AN EXISTING RESIDENTIAL CHILD CARE~~  
 127 ~~PROGRAM AND THE RELOCATION IS TO ANOTHER PART OF THE SITE OR~~

125 ~~IMMEDIATELY ADJACENT TO THE SITE OF THE EXISTING RESIDENTIAL CHILD~~  
126 ~~CARE PROGRAM.~~

127 ~~(3) A PROVIDER SHALL FILE AN APPLICATION FOR A~~  
128 ~~CERTIFICATE OF NEED WITH THE OFFICE ON A FORM THAT THE OFFICE~~  
129 ~~PROVIDES.~~

130 ~~(E) (1) WHEN THE OFFICE RECEIVES AN APPLICATION FOR A~~  
131 ~~CERTIFICATE OF NEED, THE OFFICE SHALL:~~

132 ~~(I) PUBLISH NOTICE OF THE FILING IN THE MARYLAND~~  
133 ~~REGISTER; AND~~

134 ~~(II) SEND WRITTEN NOTICE TO:~~

135 ~~1. EACH MEMBER OF THE GENERAL ASSEMBLY IN~~  
136 ~~WHOSE DISTRICT THE RESIDENTIAL CHILD CARE PROGRAM IS PLANNED;~~

137 ~~2. EACH MEMBER OF THE GOVERNING BODY FOR~~  
138 ~~THE COUNTY WHERE THE RESIDENTIAL CHILD CARE PROGRAM IS PLANNED;~~

139 ~~3. THE COUNTY EXECUTIVE, MAYOR, OR CHIEF~~  
140 ~~EXECUTIVE OFFICER, IF ANY, IN WHOSE COUNTY THE RESIDENTIAL CHILD CARE~~  
141 ~~PROGRAM IS PLANNED; AND~~

142 ~~4. ANY OTHER PERSON THE OFFICE KNOWS HAS AN~~  
143 ~~INTEREST IN THE APPLICATION.~~

144 ~~(2) FAILURE TO GIVE NOTICE UNDER PARAGRAPH (1) OF THIS~~  
145 ~~SUBSECTION MAY NOT ADVERSELY AFFECT THE APPLICATION.~~

146 ~~(F) ALL DECISIONS OF THE OFFICE ON AN APPLICATION FOR A~~  
147 ~~CERTIFICATE OF NEED SHALL BE CONSISTENT WITH THE PLAN AND THE~~  
148 ~~STANDARDS FOR REVIEW ESTABLISHED BY THE MEMBERS OF THE CHILDREN'S~~  
149 ~~CABINET.~~

150 ~~(F) (G) (1) THE OFFICE SHALL HAVE FINAL NONDELEGABLE AUTHORITY~~  
151 ~~TO ACT ON AN APPLICATION FOR A CERTIFICATE OF NEED.~~

152 (2) AFTER AN APPLICATION IS FILED, THE OFFICE:

153 (I) SHALL REVIEW THE APPLICATION FOR COMPLETENESS  
154 WITHIN 10 WORKING DAYS AFTER THE FILING OF THE APPLICATION; AND

155 (II) MAY REQUEST FURTHER INFORMATION FROM THE  
156 APPLICANT.

157 (3) ANY INTERESTED PERSON MAY SUBMIT WRITTEN COMMENTS  
158 ON THE APPLICATION IN ACCORDANCE WITH PROCEDURAL REGULATIONS  
159 ADOPTED BY THE MEMBERS OF THE CHILDREN'S CABINET.

160 (4) (I) THE OFFICE MAY HOLD AN EVIDENTIARY HEARING ON  
161 ITS OWN INITIATIVE OR AT THE REQUEST OF THE APPLICANT OR AN  
162 INTERESTED PERSON.

163 (II) AN EVIDENTIARY HEARING UNDER SUBPARAGRAPH (I)  
164 OF THIS PARAGRAPH SHALL BE CONDUCTED IN ACCORDANCE WITH THE  
165 CONTESTED CASE PROCEDURES OF THE ADMINISTRATIVE PROCEDURE ACT.

166 (5) AFTER REVIEWING THE APPLICATION, ANY WRITTEN  
167 COMMENTS ON THE APPLICATION, ANY TESTIMONY OFFERED DURING AN  
168 EVIDENTIARY HEARING, AND ANY OTHER MATERIALS AUTHORIZED BY THE  
169 CHILDREN'S CABINET REGULATIONS, THE OFFICE SHALL ISSUE A PROPOSED  
170 DECISION ON THE APPLICATION.

171 (6) THE APPLICANT OR ANY INTERESTED PERSON WHO HAS  
172 SUBMITTED WRITTEN COMMENTS UNDER PARAGRAPH (3) OF THIS SUBSECTION  
173 MAY SUBMIT WRITTEN EXCEPTIONS TO THE PROPOSED DECISION, IN  
174 ACCORDANCE WITH REGULATIONS ADOPTED BY THE MEMBERS OF THE  
175 CHILDREN'S CABINET, BEFORE THE OFFICE TAKES FINAL ACTION ON THE  
176 APPLICATION.

177 (7) THE OFFICE SHALL APPROVE, APPROVE WITH CONDITIONS,  
178 OR DENY THE APPLICATION ON THE BASIS OF THE RECORD AND EXCEPTIONS, IF  
179 ANY, BEFORE THE OFFICE.

(H) IF THE PLAN IDENTIFIES A NEED FOR ADDITIONAL RESIDENTIAL CHILD CARE PROGRAMS IN A COUNTY, IN A COMPARATIVE REVIEW OF TWO OR MORE APPLICANTS FOR A RESIDENTIAL CHILD CARE PROGRAM, A CERTIFICATE OF NEED SHALL BE GRANTED TO ONE OR MORE APPLICANTS IN THAT COUNTY THAT:

(1) HAVE SATISFACTORILY MET ALL APPLICABLE STANDARDS;  
AND

(2) THE OFFICE FINDS AT LEAST COMPARABLE TO ALL OTHER APPLICANTS.

(I) (1) THE OFFICE SHALL MAKE A DECISION ON AN APPLICATION FOR A CERTIFICATE OF NEED NO LATER THAN 150 DAYS AFTER THE APPLICATION WAS FILED.

(2) IF AN EVIDENTIARY HEARING IS NOT REQUESTED, THE OFFICE SHALL MAKE A DECISION ON AN APPLICATION NO LATER THAN 90 DAYS AFTER THE APPLICATION WAS FILED.

(3) IF THE OFFICE DOES NOT ACT ON AN APPLICATION WITHIN THE REQUIRED PERIOD, THE APPLICANT MAY FILE WITH A COURT OF COMPETENT JURISDICTION, WITHIN 60 DAYS AFTER EXPIRATION OF THE PERIOD, A PETITION TO REQUIRE THE OFFICE TO ACT ON THE APPLICATION.

(J) THE DECISION OF THE OFFICE ON AN APPLICATION FOR A CERTIFICATE OF NEED FOR A RESIDENTIAL CHILD CARE PROGRAM IS THE FINAL ADMINISTRATIVE DECISION FOR THE PURPOSES OF JUDICIAL REVIEW UNDER THE ADMINISTRATIVE PROCEDURES ACT.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2008.